IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

1. Ladhu Khan VS. State of Rajasthan & Ors.
D.B. CIVIL SPECIAL APPEAL (W) NO.554/1999

2. Taju Khan VS. State of Rajasthan & Ors.
D.B. CIVIL SPECIAL APPEAL (W) NO.490/1999

3. Mohd. Khan VS. State of Rajasthan & Ors.
D.B. CIVIL SPECIAL APPEAL (W) NO.497/1999

4. Mabu Khan VS. State of Rajasthan & Ors.
D.B. CIVIL SPECIAL APPEAL (W) NO.498/1999

Date of judgment : 17th April, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. R.K. Singhal for the appellants.
Mr. L.R. Upadhyay, Dy. Government Advocate.

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BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

These four appeals arise out of the orders passed by learned Single Judge separately in writ

petitions filed by respective petitioners challenging the orders of Board of Revenue, Revenue Appellate Authority and the SDO dated 31st October, 1998, 21st Feb., 1995 and 5.4.1990 respectively. The Revenue Appellate Authority and the Board of Revenue have passed common orders in all the four cases as they proceeded on the like facts and like grounds.

All the four writ petitions filed by the respective petitioners have been dismissed by the learned Single Judge considering that all the findings by the respective Revenue Authorities are all finding of fact and are not liable to be interfered.

Before admitting these appeals, the Division Bench has directed on 7.9.1999 to call for the record from the S.D.O., Ratangarh pertaining to matters relating to Ladu Khan, Taju Khan, Mohd. Khan and Mobu Khan, which became subject matter of appeals No.5/91, 6/91, 7/91 and 8/91 in each case restraining the respondents from evicting the appellants-petitioners from the house in question and by order dated 22nd March, 2002, ad

interim orders were confirmed. All the four appeals were directed to be listed together and heard together.

From the record, it appears that in the first instance, notices to all the petitioners-appellants were issued by Tehsildar Sujangarh on 12.8.1985 under Section 90A and 91 of the Rajasthan Land Revenue Act for evicting the petitioners-appellants from their respective land inter alia on the ground that they have constructed residential house on the agricultural land held by them in breach of Section 90A of the Rajasthan Land Revenue Act without seeking the conversion of the land before raising construction of the house and using their land for the purposes other than for agricultural purpose. Hence, they were sought to be treated as trespassers and liable to be evicted.

In those proceedings, the Tehsildar recorded that as per his site inspection, he found that all the petitioners were habitants of the land in question since before 50 years. He also found that the "Kachchha" construction having been damaged during rains, at the

same place Pacca constructions have been made by the petitioners. In the said order, he also referred to the report of the survey conducted by Municipal Council, Sujangarh supporting the possession of the occupants since before 44-45 years. He also made enquiries from the neighbours and according to which also he concluded that the occupants are residing there since before 50 to 60 years from the time of their ancestors. He also found that the complainant Om Prakash, at whose instance the proceedings were initiated is habitual complainant and is himself interested in grabbing the land in question by evicting the old occupants. With these findings, he dropped the proceedings for eviction as he found them to be old habitants.

Since petitioner were found habitants at least since before 20th August, 1981, the date of the issuance of notice on which the land conversion rules came into force, he was of the opinion that the non-petitioner in each case should make appropriate application for regularising their rights under the provisions of Section 90A and the Rules framed thereunder.

Once again the proceedings were initiated against the appellants by S.D.O. by issuing notice on 11.1.1990 fixing a next date to be 25.1.1990. The report of the survey was also called for. The notices were again issued for the date of 15th March, 1990 and then another notice was issued for the date of hearing on 5.4.1990. On 5.4.1990 the following orders were passed by the SDM in all the four cases:-

"5.4.90 पत्रावली पेश हुई। अप्रार्थी ने खसरा नंबर 1585 में से 1071.7 वर्गगज भूमि कस्बा सुजानगढ़ में आवासीय प्रयोजनार्थ रूपान्तरण दिनांक 20.8.81 से पूर्व का कर रखा है। वादगत भूखण्ड का मौका देखा गया। भूखण्ड कस्बा सुजानगढ़ श्रेणी 3 जोन I में पड़ता है। यह प्रकरण राजस्थान भू राजस्व (नगरीय क्षेत्रों में आवासीय/वाणिज्यक प्रयोजनों के लिए कृषि भूमि आवंटन, रूपान्तरण एवं विनियमन) नियम 1981 के अनुसार नियमन योग्य है।

जोन I की दर 15/-रू0 प्रतिवर्गगज के हिसाब से प्रार्थी के भूखण्ड का आवासीय प्रयोजनार्थ रूपान्तरण शुल्क 16077/- रू0 व शास्ती 1608/- रू0 कायम

की जाती है। तथा विकास शुल्क के 5/–रू0 प्रति वर्गगज के हिसाब से 5359/– रू0 देय है। कम्पाउडिंग फीस 1540/– अपखंडन फीस 10/– है।

तदनुसार आदेश की प्रतिलिपि तहसीलदार सुजानगढ़ को भेजकर निर्देशित किया जावें कि उक्त राशि मांग प्रार्थी के नाम कायम की जाकर नियमानुसार वसूली की कार्यवाही सम्पादित करें व वसूली से अवगत करावें।

पत्रावली फैसलशुमार होकर नंबर से क्रम हो।

एस.डी.
उपखण्ड अधिकारी,
भूमि रूपान्तरण,

रतनगढ़"

This order does not record whether the service of notice on the holders of the land were at all effected, nor their presence or absence was recorded.

According to the case of the respondents as has been made out throughout that the appellants had not appeared despite notice and, therefore, they have not availed the opportunity offered to them. However, the case of the petitioners was that on 5.4.1990 they

were present but since the SDM was busy in some meeting, they submitted their reply and objections to the notice, which are on record of the SDM's file. Thereafter they came to know of proceedings only when they received notices for recovery of the amount levied as conversion charge vide order dated 5.4.1990. On receipt of such notices, they filed objections in response to said recovery notices that they having come to know for the first time about the order dated 5.4.1990 on receipt of notices from the Tehsildar about the recovery of the aforesaid sum and reiterated their objections to the demand and thereafter preferred an appeal before the Revenue Appellate Authority.

The appeal was dismissed by Revenue Appellate Authority by holding that their residential houses were existing on the agricultural land in question and the opportunity was given to the respondents to raise objection but they have not availed the opportunity. Therefore, the reply submitted by them cannot be considered. Secondly, the Revenue Appellate Authority did not refer to certain facts which emanate

from the reply submitted by the present appellants and which had not been explained by any one so far. While it has referred to the fact that in samwat year 2044 to 2047 the land in question has been entered as agricultural land, it also refers to the fact that way back in samwat year 2010 and 2011 as per map on record, the land was shown as Abadi.

This clearly postulates that at least before the commencement of the Rajasthan Land Revenue Act, 1956 and before the enactment of the Rajasthan Tenancy Act, 1955 the land was found classified as abadi.

Faced with this situation, the Revenue Appellate Authority instead of holding any inquiry into the correctness of these conflicting facts emerging on his record raised presumption of correctness of later record of samwat year 2044-47 and rejected the contention of the appellants that since even at the time of first initiation of the proceedings they were residing at the place since at least 50 years before the issuance of

first notice in 1985 and the provisions relating to Section 90 A treating them as trespassers did not apply, but the said objection has been repeated only on surmises and conjectures.

The same set of reasoning prevailed with the Board of Revenue while rejecting the appeals preferred by the occupants.

In reaching these findings, the Revenue Appellate Authority as well as Board of Revenue have ignored the basic issue, whether the order passed by the SDM under Section 90 A could be sustained at all. Whether on the basis of material before them, could anyone of ordinary prudence reach a finding that the houses in question were constructed after commencement of the provisions of Section 90A? No such finding was recorded by any of the officers that the houses in question were constructed after the commencement of Section 90A.

Moreover bereft of all technical objections

raised on both sides the tenor of order passed by SDO clearly refers to the observations made by the Tehsildar in his order dated 27th March, 1988 in which he has referred to fact that houses have been constructed at least prior to 20th August, 1981 and it is not desired that they should be evicted from the land in question. Apart from the said order, no material is available on the basis of which this finding that constructions were raised before 20th August, 1981 could have been reached. This also lends credence to the contention raised on behalf of the appellant that the order of Tehsildar dated 27th April, 1988 was very much within the knowledge of the SDM while passing the impugned order dated 5.4.1990 and if that were so, it could not have been assumed by the SDM that the finding recorded by the Tehsildar on the basis of his site inspection and the enquiries made from the neighbours the petitioners-appellants that they were residing at the same place since before 50 years from the date of passing of the order and that the complainant was a habitual complainant with ulterior motives to grab the land in question for himself.

Apparently, the petitioner has not been dealt with fairly.

The notices were issued on 5th April, 1990 for hearing. According to the petitioners, they were present on that day, but when they were present in Court the learned SDM was engaged somewhere and, therefore, they could file the reply on the next date. Without denying this aspect of the matter and considering this aspect, the Revenue Appellate Authority as well as the Board of Revenue have taken the opportunity to sermonise the litigant to find out the next date and the proceedings of the date forgetting about the basic issue required to be enquired by them before passing any order. No attempt has been made by any of the authorities to find out as a matter of fact when the construction had been made, when admittedly the construction had not been raised newly and were under undisputed in existence at least when Tehsildar had made first report his persuance of notice under Section 90 to evict the occupants and found it not to be a case of eviction. Even according to the impugned order

passed by the SDM in which he does not disclose on what material he has come to the conclusion that the constructions were raised before 20th August, 1981, if it were not founded on the order of the Tehsildar referred to above.

Had notices been issued independently and the order been passed without reference to the order of Tehsildar, in ordinary course, the notice to the petitioners-appellants would have been issued as trespassers for eviction and not for regularisation of their possession on payment of conversion charges by determining the amount. The very fact that the proceeding has been commenced for the regularisation of constructions on premise that they are liable to be regularised without there being any application and the order was passed by SDM for raising a demand for conversion charges, clearly corroborates the fact that the SDM was acting only in furtherance of the order of Tehsildar, passed in 1985 in which he has recorded the possession of appellants as their residence being there for almost 50 years and that they were not liable to be

evicted therefrom and required the occupants to get their rights formalised under the provisions of law. Apparently, this penalty has been levied because the appellants considered that their case does not fall within the provisions of Section 90A and they have not made any application for regularization. The SDM has acted suo moto for raising a demand from concerned parties. Why this unusual course was adopted is best known to the SDM, if not on the basis of Tehsildar's earlier order existing on record.

Be that as it may, considering the fact that the matter was enquired in the first instance by the Tehsildar and he recorded a finding that the appellants are habitants of land in question since 50 to 60 years before the time of his site inspection and dating it back to calender year 1930 when neither the Land Revenue Act was in force nor Section 90A had been enacted. The action in terms of 90A could not have been initiated by him without holding any further enquiry and reaching a definite finding that the constructions have been raised after commencement of the said provisions which were

prospective in operation, nor the Revenue Appellate Authority or the Board of Revenue could have reached any finding by ignoring even after noticing the land records of samwat 2010 and 2011 immediately prior to commencement of Rajasthan Land Revenue Act which came into force in samwat year 2012 (1955. By raising presumptions and surmises about the nature of land at the time of commencement of the Rajasthan Land Revenue Act only on the basis of recent entries in the land record. If the entries made in Samwat year 2044, 2047 are part of land record, the entries made in 2010 and 2011 were also part of the land record and could not have been ignored without holding any enquiry there into. If the land was shown as abadi before commencement of Rajasthan Law Revenue Act and Rajasthan Tenancy Act, and was in occupation of petitioners as residence subsequently in the absence of any such proceedings could not have been given credence. Accordance. Particularly in the light of earlier record and report of Tehsildar the presumption about correctness of entires in law record, stood rebutted from the existing material on record.

We are, therefore, of the opinion that the orders passed by the SDM, Ratangarh and subsequent orders passed by the Revenue Appellate Authority are not only against the principles of natural justice but also suffers from the errors apparent on the face of record and cannot be sustained on that ground also.

The learned Single Judge has clearly erred in law in not appreciating that no finding had been recorded that the constructions were made after commencement of the provisions concerned by merely saying that the constructions were raised prior to 20th April, 1981 without considering the the specific significance of that date, the date the conversion rules had came into force and without considering as to when the constructions had come into existence.

Accordingly, these appeals are allowed. The judgment under appeal in each case is set aside. The writ petitions are allowed and the impugned orders Annex.1 to 4 in each case are quashed. Rule is made absolute is all appeals. There shall be no orders as to

costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

babulal/